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Message Text

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PAGE 01 STATE 080107
ORIGIN JUSE-00

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JUSTICE DEPT:BRUNO RISTAU
----------091841Z 010994 /53
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FM SECSTATE WASHDC
TO AMEMBASSY LONDON
INFO AMCONSUL MUNICH

UNCLAS STATE 080107

MUNICH, FOR MR. CHARIG

E.O. 11652: N/A

TAGS:ACLM, ELAB, UK

SUBJECT: CLAIMS AGAINST THE USG IN UK INDUSTRIAL TRIBUNALS

REF: A) LONDON 05536, B) LONDON A-11 DATED 1/6/77, C) LTR DOJ (RISTAU) TO ADMIN/OFF (SYSTER), 3/8/76, D) LTR DOJ (RISTAU) TO L/M (MALMBORG) 6/12/75 (CY FURNISHED TO EMB)

JOINT STATE/JUSTICE MESSAGE.

1. IN RESPONSE TO REFTEL A, EMBASSY REQUESTED TO INFORM UK FOREIGN & COMMONWEALTH OFFICE (FCO) THAT USG FORMALLY ACCEPTS ORIGINATING APPLICATION IN CASE OF SUBRAMANIAM.
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PAGE 02 STATE 080107

AS REGARDS CASES OF HARDING, MCINTYRE AND JACKSON, DEPT WILL INSTRUCT EMBASSY UPON COMPLETION OF ONGOING EXAMINATIONS OF CLAIMS BY WASHINGTON AGENCIES CONCERNED.

2. EMBASSY SHOULD ALSO INFORM FCO THAT, AS A GENERAL RULE, USG REQUIRES MINIMUM 60 DAYS WITH RESPECT TO CLAIMS ASSERTED BEFORE IND. TRIBS. IN ENGLAND & WALES, AND UP TO TWICE

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

THAT LONG WITH RESPECT TO CASES BROUGHT BEFORE IND. TRIBS. IN SCOTLAND AND NORTHERN IRELAND BEFORE FCO CAN EXPECT NOTICE FROM USG AS TO WHETHER ORIGINATING APPLICATIONS WILL BE "ACCEPTED". (FYI: AMONG PRESENT CASES, MCINTYRE CLAIM ASSERTED IN SCOTLAND, AND JACKSON CLAIM IN NORTHERN IRELAND. BECAUSE OF INADVERTENT DELAY IN TRANSMISSION OF REF B TO DOJ - SEE ALSO LONDON A-160 OF 3/8/77 - CONSIDERATION OF THESE CLAIMS HAS BEEN UNAVOIDABLY DELAYED BY DOJ, NAVY AND ARMY. END FYI).

3. PROCEDURES EMPLOYED BY DOJ IN REPRESENTING US AGENCIES AND INSTRUMENTALITIES BEFORE UK IND. TRIBS. WERE SUMMARIZED IN REF C, AND DETAILED AT LENGTH IN REF D. IT IS IMPERATIVE THAT DOJ HAVE ADEQUATE TIME (1) TO OBTAIN COMPREHENSIVE LITIGATION REPORT FROM USG AGENCIES IN UK WHOSE ACTIVITIES GENERATE LABOR SUITS BEFORE IND. TRIBS.; (2) AFTER RECEIPT OF REPORT, HAVE OPPORTUNITY TO DISCUSS MERITS OF CLAIMS WITH GENERAL COUNSELS OR JUDGE ADVOCATES GENERAL IN WASHINGTON; AND (3) CONSULT WITH BRITISH SOLICITORS, BEFORE A DETERMINATION IS MADE WHETHER TO "ACCEPT FORMALLY" ORIGINATING APPLICATIONS. LIMITED TIME PROVIDED UNDER ENGLISH LAW TO APPEAR IN COURT AFTER AN ORIGINATING APPLICATION IS "ACCEPTED" IS WHOLLY INADEQUATE TO CONSIDER AND PREPARE FOR DEFENSE OF CLAIMS BEFOREHAND.

4. DELAY IN "ACCEPTANCE" OF ORIGINATING APPLICATIONS IS ALSO ESSENTIAL IN IMPLEMENTATION OF USG POLICY NOT TO CLAIM SOVEREIGN IMMUNITY FROM SUIT IN LABOR MATTERS AND, UNCLASSIFIED

AT THE SAME TIME, TO SEEK AMICABLE OUT-OF-COURT SETTLEMENT OF MERITORIOUS CLAIMS. POLICY MANIFESTLY WORKS TO ADVANTAGE OF CLAIMANTS AND IS FAVORED BY ANGLO-AMERICAN TRADITIONS OF LAW. (FYI: IN INSTANT CASES, JACKSON'S REDUNDANCY PAY CLAIM IN NORTHERN IRELAND IS BEING SETTLED BY NAVY. 9SEE ALSO MSG 051521Z APR 77 FROM COMNAVACT/LONDON); NAVY ALSO ENDEAVORING TO SETTLE AND COMPROMISE MCINTYRE CLAIM IN SCOTLAND; CONSIDERATION OF SETTLEMENT OF HARDING CLAIM AT BURTONWOOD ARMY DEPOT DELAYED DUE TO INABILITY TO LOCATE CLAIMANT. CONCILIATION MEETING NOW SET FOR NEXT WEEK. SUBRAMANIAM CLAIM NOTED IN PARA. 1, ABOVE, HAS BEEN DETERMINED TO BE WITHOUT MERIT, AND WILL BE RESISTED IN COURT. LONDON SOLICITOR (PETER SUMMERFIELD) HAS BEEN RETAINED AND IS BEING INSTRUCTED BY DOJ AS TO DEFENSE TO BE RAISED IN COURT. END FYI.)

5. IND. TRIBS. ARE PATENTLY AWARE OF UNIQUE CIRCUMSTANCES PRESENT WHEN A FOREIGN GOVERNMENT (OR AN AGENCY OF A

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

FOREIGN GOVERNMENT) IS NAMED AS A DEFENDANT IN PROCEEDINGS
BEFORE SUCH TRIBUNALS. SEE DECISION OF 23 DEC 76 OF IND.
TRIB. OF CARDIFF IN CASE OF D.G. SIMMONDS VS. USG, CASE

NO. 15824/75. EMBASSY MAY, IN ITS DISCRETION,
INFORMALLY ADVISE FCO OF ELEMENTS WHICH ENTER INTO
DETERMINATION BY USG WHETHER AN ORIGINATING APPLICATION
WILL BE "FORMALLY ACCEPTED".

6. REQUEST EMBASSY POUCH TO DEPARTMENT COPIES OF FCO
INQUIRIES AND EMBASSY'S RESPONSES.
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Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Message Attributes

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